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STATE OF COLORADO

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Colorado Department
of Public Health
and Environment

August 14, 2006

Mr. Mike England
Town of Rico

Mr. Chuck Stillwell
ARCO

Mr. Ramon Escure
Rico Renaissance

Re; Comments on the proposed institutional controls submitted as part of the Voluntary Cleanup plan for residential soils in Rico, Colorado.

Dear Voluntary Cleanup Applicants:

I have reviewed a copy of the Draft Institutional Controls [Town of Rico 6-30-05] submitted as part of the Voluntary Cleanup plan for residential soils in Rico, Colorado. I have both specific and general comments to the proposed Institutional Controls (IC's).

Specifically, I have the following comments on the IC's as written:

1. Section 885.2 Approved Sampling Contractors; No such list of approved contractors exists within the State of Colorado. I would recommend changing this to indicate that sampling contractors must meet the ASTM or EPA definition of a "Qualified Environmental Professional".
2. Section 885.3 Analytical Procedures; This appears to be a typographic error as the sampling methodology should be listed as SW 846, not SW 849.
3. Section 885.3 A & B; Since laboratory procedures change I would add verbiage at the end of this section such as ...(ICP) "or equivalent".
4. Section 885.4 Minimum Surface Samples; The current sampling protocol employed in Rico specifies no sampling within 1' of the building, not 4' as this states. I suggest changing this to be consistent.
5. Section 886.4 Remediation Standards; I would suggest adding the following phrase to the existing: "Where a property contains Action Level Soils"... *or where ALS is likely to be encountered...*

The above conclude my specific comments. In addition I have the following general comments regarding the IC's as proposed as well as possible implementation issues.

1. There are numerous studies which suggest that Rico has naturally-occurring, near surface levels of Pb in its soils which adds additional complexity to the implementation of these regulations. It should be noted that the vast majority of sampling to date has been within the 0-2" depth, therefore no conclusions can be drawn about soils at greater depths such as might be encountered in deeper excavations. It logically follows that all yards where an excavation is deeper than 2" could encounter Action Level Soils (ALS). Collection of depth samples prior to excavation (as suggested by Section 885.5) is no guarantee that ALS will not be encountered. To address the need (or not) for permits in a manner protective of public health and the environment consider the following recommendations:
 - a. Ideally, all yards, but at least those which undergo one or all of the following (excavation greater than 2", generation of >2 cubic yards, location of the property in the RSOZ) should collect confirmatory soil samples after conclusion of the activities to demonstrate that surficial conditions are protective of future users of the property.
 - b. If less than 2 cubic yards of soil is generated then either test the soil prior to re-use or dispose of it in the repository.
2. In implementation of these IC's one should consider that with respect to yards cleaned up by ARCO, any excavation below 12" or below the ID barrier will encounter ALS. In consideration of this, any excavation in the RSOZ not tested by ARCO (i.e. under existing structures, or under the ID barrier) should be subject to permitting under these regulations.
3. In considering implementation of these IC's, the existing limited resources available to Rico, and the burden put on residents to comply with these regulations, please consider all possible means to implement the following:
 - a. Funding and training for additional Town staff to oversee all excavations generating more than 2 cubic yards.
 - b. Purchase of field sampling equipment such as an XRF to monitor excavations as they progress and to document compliance and proper disposition of soils upon completion of the permitted activity.

The following comments are mentioned as not necessarily directly relevant to the implementation of the IC's but are listed for the consideration of the applicants.

1. Other existing regulations such as those promulgated by the Occupational Safety and Health Administration (OSHA) may pertain to future activities in Rico when ALS is or may be encountered. These regulations may apply to commercial excavators and Town staff handling or encountering ALS.
2. It has been the experience of the CDPHE Voluntary Cleanup Program that those buying real estate are keenly interested in the condition of their purchase prior to acquisition. In order to facilitate the transfer of properties in Rico, implementation of some system which quickly documents for buyers and sellers conformance with the Rico cleanup in a "Yes, No, or Unknown" format could clear up confusion in the transactional process. Alternatively, this might be addressed under Real Estate disclosure law and may not apply.

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Please contact me at 303 692-3449 if further discussion or explanation is needed on any parts of this letter. Please provide this Department a copy of any revised IC's prior to adoption as the final form of these are integral to the ongoing Voluntary Cleanup.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Walker". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark E. Walker
Voluntary Cleanup Program

Cc: Deb Ehlert; EPA Region 8
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